

Nos. 14503 - 14504

United States
Court of Appeals
for the **Ninth Circuit**

JOW CHU YUN, on Behalf of JOW MUN YOW,
Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,
Appellee.

JOW CHU YUN, on Behalf of JOW KWONG
YEONG,
Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,
Appellee.

Transcript of Record

**Appeals from the United States District Court for the
Northern District of California,
Southern Division.**

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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United States Attorney;

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San Francisco, Calif.,

Attorney for Respondent and Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 33427

In the Matter of

The Application of JOW CHU YUN, on Behalf of
JOW MUN YOW,

Petitioner,

PETITION FOR WRIT OF
HABEAS CORPUS

To the Honorable United States District Court for
the Northern District of California, Southern
Division:

The petition of Jow Chu Yun respectfully shows
and represents:

I.

That at all times herein mentioned your petitioner, Jow Chu Yun, was and is a citizen of the United States and resides at 885 Page Mill Road, in the City of Palo Alto, County of Santa Clara, State of California, within the above District.

II.

That at all times herein mentioned Jow Mun Yow was and is a son of your petitioner and that at the time of his admission to the United States he was of the age of nineteen (19) years and ten (10) months.

III.

That at all times herein mentioned Bruce G. Barber was and is the District Director of the Immigra-

tion and Naturalization Service of the Department of Justice with offices in the City and County of San Francisco, State of California, within the above District.

IV.

That your petitioner's son Jow Mun Yow, is now in the custody of said Bruce G. Barber, as District Director of the Immigration and Naturalization Service, and is deprived illegally of his liberty by said Bruce G. Barber and that the alleged cause of his detention is as follows, to wit.

That said Jow Mun Yow was admitted into the United States on or about October 21st, 1951, at San Francisco, California, and that he carried with him for presentation to the Immigration and Naturalization Service a Consular Travel Affidavit, accompanied by a travel authorization stamp duly signed and sealed by Vice Consul James T. Rousseau at Hong Kong, British Crown Colony; that said Jow Mun Yow is a citizen of the United States, being the son of your petitioner herein; that following his admission to the United States, he was permitted to enter the United States under bond and has been assisting your petitioner in growing flowers at Palo Alto, California; that proceedings were had before a Board of Special Inquiry of the Immigration and Naturalization Service to determine that said Jow Mun Yow was a son of your petitioner and as such was a citizen of the United States. That said Board of Special Inquiry held that the identification of said Jow Mun Yow, as the son of your petitioner,

had not been satisfactorily established; that several appeals were taken from said Board of Special Inquiry to the Board of Immigration Appeals and that the findings of the Board of Special Inquiry held in San Francisco, on December 7, 1951, were affirmed.

That the Immigration and Naturalization Service, acting through the aforesaid Bruce G. Barber, as District Director, has ordered said Jow Mun Yow excluded from the United States and that said Jow Mun Yow is presently in the custody of the said Bruce G. Barber for the purpose of being excluded from the United States by air line, for transportation back to Hong Kong, China.

That all administrative proceedings have been exhausted and that the only remedy available to petitioner is by application to this Court for a Writ of Habeas Corpus.

V.

That said proceedings had before said Board of Special Inquiry of the Immigration and Naturalization Service were sham and were not in fact a real hearing as to petitioner's relationship to the aforesaid Jow Mun Yow; that evidence was excluded from said hearing dealing with blood and paternity tests which would have established that petitioner is the father of said Jow Mun Yow and that said Board of Special Inquiry acted contrary to uncontradicted evidence which clearly established that the relationship of father and son existed between your petitioner and said Jow Mun Yow.

VI.

That there has never been any judicial inquiry or court proceeding into the matter of petitioner's relationship to said Jow Mun Yow and that the Immigration and Naturalization Service admits that your petitioner is a citizen of the United States. That if said Jow Mun Yow is deported from the United States, pursuant to the aforesaid order of the Immigration and Naturalization Service, he will be sent to Hong Kong from whence he will be sent into Communist China and will suffer and is likely to suffer great mental and physical torture and that your petitioner, as his parent, will be denied having the companionship of his own son, who is a citizen of the United States.

Wherefore, petitioner prays that a Writ of Habeas Corpus issue directing the aforesaid Bruce G. Barber to produce the body of Jow Mun Yow before the above-entitled Court on a day certain, to there inquire into the legality and lawfulness of the restraint of said Jow Mun Yow.

/s/ JOW CHU YUN,
Petitioner.

/s/ BERTRAM H. ROSS,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed March 23, 1954.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, California, hereinafter referred to as respondent, by and through his attorneys, Lloyd H. Burke and Charles Elmer Collett, to show cause why a writ of habeas corpus should not be issued, and admits, denies, and alleges as follows:

I.

Admits the allegations contained in paragraph I of the petition.

II.

Denies the allegations contained in paragraph II of the petition, and affirmatively asserts that Jow Mun Yow has never been admitted to the United States.

III.

Admits the allegations contained in paragraph III of the petition.

IV.

In answer to the allegations contained in paragraph IV of the petition, respondent admits, denies, and alleges as follows:

(a) Admits that Jow Mun Yow is now in the custody of the respondent, but denies that Jow Mun Yow is being illegally deprived of his liberty and affirmatively asserts that said Jow Mun Yow is lawfully detained for deportation following exclusion from the United States.

(b) Denies that Jow Mun Yow was admitted to the United States at any time, and affirmatively asserts that at the time of Jow Mun Yow's arrival at San Francisco, California, on October 21, 1951, he was held for examination before a Board of Special Inquiry.

(c) Admits that at the time of arrival Jow Mun Yow had in his possession a Travel Affidavit executed before a Vice Consul of the United States at Hong Kong, said affidavit being issued for travel to the United States for the purpose of having Jow Mun Yow's claim of citizenship tested by the Immigration and Naturalization Service.

(d) Denies that Jow Mun Yow is or ever was a citizen of the United States, and denies that he is the son of the petitioner, Jow Chu Yun.

(e) Admits that on July 22, 1952, Jow Mun Yow was paroled into the United States on bond pending termination of exclusion proceedings.

(f) Admits that proceedings were had before a Board of Special Inquiry to determine whether said Jow Mun Yow was entitled to enter the United States, and asserts that Jow Mun Yow was lawfully excluded from the United States on the ground that he was an alien not in possession of an unexpired immigration visa and that he did not present a passport or other document issued by the government of which he was a national showing his origin and identity.

(g) Admits that the excluding decision of the Board of Special Inquiry was affirmed by the Board of Immigration Appeals on August 14, 1953.

(h) Admits that Jow Mun Yow is in the custody of the respondent for the purpose of deportation from the United States pursuant to the exclusion order of the Board of Special Inquiry.

(i) Admits that all administrative remedies have been exhausted.

(j) Denies all other allegations contained in paragraph IV.

V.

Denies the allegations contained in paragraph V of the petition.

VI.

Admits that there has been no judicial proceeding into the matter of the alleged relationship of Jow Mun Yow to the petitioner; admits that the petitioner, Jow Chu Yun, is a citizen of the United States; admits that Jow Mun Yow will be deported to China via Hong Kong; denies all other allegations contained in paragraph VI.

Wherefore, the respondent prays that the petition for a writ of habeas corpus be dismissed and the order to show cause be discharged.

Dated at San Francisco, California, this 31st day of March, 1954.

/s/ LLOYD H. BURKE,

United States Attorney;

/s/ CHARLES ELMER COLLETT,

Assistant U. S. Attorney,

Attorneys for Respondent.

[Endorsed]: Filed March 31, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 33427

In the Matter of

The Application of JOW CHU YUN, on Behalf of
JOW MUN YOW,

Petitioner.

ORDER GRANTING HABEAS CORPUS

This petition is brought on behalf of a 19 year old boy who is seeking entrance into this country as the foreign born son of a United States citizen. This boy was detained at the port of San Francisco for a hearing by a board of special inquiry upon his right to enter the United States. Said board denied his claim and excluded him from admission on the basis that Jow Mun Yow had not satisfactorily identified himself as the son of the petitioner. Pending appeal he was paroled into the United States under bond. All administrative proceedings having been exhausted, application is made to this court for a writ of habeas corpus for the reasons that evidence was excluded at the hearing dealing with blood and paternity tests, and that the board acted contrary to uncontradicted evidence which it is claimed clearly establishes that the relationship of father and son exists between petitioner and Jow Mun Yow.

It is agreed to by the parties that habeas corpus is the proper remedy in this matter.

While it is settled that a release under bond is not deemed to be an entry into this country, *Kaplan vs. Tod*, 267 U. S. 228; and *Shaughnessy vs. Mezei*, 345 U. S. 206; still, where the person sought to be excluded has been admitted into the United States by the Immigration and Naturalization Service, regardless of the method of entry under which he was allowed, the matter must be treated as a deportation matter giving the right to a hearing on a writ of habeas corpus in the United States District Court. *Shaughnessy vs. Mezei*, supra; *Conn vs. Gottlieb*, 265 U.S. 310; *Heikkila vs. Barber*, 345 U. S. 229; *Rubenstein vs. Brownell*, 206 F. (2d) 449; *Quon Poy vs. Johnson*, 273 U.S. 352; *Hughes vs. Tropello*, 296 F. 307; *U. S. ex. rel. Vajka vs. Watkins*, 179 F. (2d) 137.

It Is Ordered that the petition for writ of habeas corpus herein filed be and the same is hereby granted.

Dated: June 8th, 1954.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed June 8, 1954.

In the United States District Court for the North-
ern District of California, Southern Division

No. 33427

In the Matter of

The Application of JOW CHU YUN, on Behalf of
JOW MUN YOW,

Petitioner.

ORDER

The above matter having come on for hearing on the 30th day of June, 1954, and it appearing that in response to the Order of this Court entered on June 8, 1954, the respondent produced before this court the said Jow Mun Yow and placed into evidence his exhibits dealing with blood and paternity, and the court having reviewed all of the records and files of the administrative hearing, and after a full consideration of all the evidence, both oral and documentary, and the arguments of counsel, and being fully advised in the premises,

It Is Hereby Ordered that the Writ of Habeas Corpus heretofore issued be vacated and the petition herein be dismissed.

Dated: July 16, 1954.

/s/ MICHAEL J. ROCHE,

Chief Judge, U. S. Dist. Court.

[Endorsed]: Filed July 16, 1954.

In the United States District Court for the North-
ern District of California, Southern Division

No. 33428

In the Matter of

The Application of JOW CHU YUN, on Behalf of
JOW KWONG YEONG,

Petitioner,

ORDER

The above matter having come on for hearing on the 30th day of June, 1954, and it appearing that in response to the Order of this Court entered on June 8, 1954, the respondent produced before this court the said Jow Kwong Yeong and placed into evidence his exhibits dealing with blood and paternity, and the court having reviewed all of the records and files of the administrative hearing, and after a full consideration of all the evidence, both oral and documentary, and the arguments of counsel, and being fully advised in the premises,

It Is Hereby Ordered that the Writ of Habeas Corpus heretofore issued be vacated and the petition herein be dismissed.

Dated: July 16, 1954.

/s/ MICHAEL J. ROCHE,
Chief Judge, U. S. Dist. Court.

[Endorsed]: Filed July 16, 1954.

[Title of District Court and Cause.]

No. 33427

NOTICE OF APPEAL

Notice is hereby given that the petitioner above named does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order vacating writ of habeas corpus and denying the petition therefor, entered on July 16, 1954.

Dated this 26th day of July, 1954.

/s/ BERTRAM H. ROSS,
Attorney for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 27, 1954.

[Title of District Court and Cause.]

No. 33428

NOTICE OF APPEAL

Notice is hereby given that the petitioner above named does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order vacating writ of habeas corpus and denying the petition therefor, entered on July 16, 1954.

Dated this 26th day of July, 1954.

/s/ BERTRAM H. ROSS,
Attorney for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 27, 1954.

[Title of District Court and Cause.]

Nos. 33438 and 33427

STIPULATION RE RECORD ON APPEAL

It Is Hereby Stipulated by and between appellants and appellee that appellant's appeals in the above-entitled causes to the United States Circuit Court of Appeals for the Ninth Circuit may be presented upon a single record and that after said matters are docketed in the United States Circuit Court of Appeals for the Ninth Circuit that the two appeals may be consolidated and argued and briefed together as a single appeal.

Dated this 24th day of August, 1954.

/s/ BERTRAM H. ROSS,
Attorney for Appellants.

/s/ LLOYD H. BURKE,
United States Attorney,
Attorney for Appellee.

[Endorsed]: Filed August 31, 1954.

[Title of District Court and Cause.]

Nos. 33427 and 33428

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Appearances:

For Petitioner:

BERTRAM H. ROSS, ESQ.

For Respondent:

LLOYD H. BURKE, ESQ.,

United States Attorney, By

MILTON T. SIMMONS, ESQ.,

Assistant U. S. Attorney.

Wednesday, June 30, 1954

The Clerk: Jow Yeong and Jow Yow.

Mr. Ross: We are ready. May the record show that the petitioner is here, and by a Writ of Habeas Corpus, that the two young men are present in Court.

At this time the Petitioners would like to offer in evidence by reference the file of the Immigration and Naturalization Service involving the record of the two applicants.

The Court: I am somewhat confused in relation to this proceeding. I issued a Writ of Habeas Corpus on the theory that you didn't have an opportunity to present your evidence at the Hearing Board; am I correct?

Mr. Ross: That plus the fact that the action by the Hearing Board was arbitrary and capricious, and that the decision of the Appeal Board and the Special Board of Immigration Appeals, was contrary to the uncontradicted evidence.

The Court: What is your thought?

Mr. Simmons: My understanding, your Honor, was that the Writ was granted because it was your understanding that the Government had refused to permit the blood tests and——

The Court: You are correct.

Mr. Simmons: And I believe that Counsel has the blood tests, and we are willing to stipulate that they can go into the record for your [2*] Honor's——

The Court: Is that agreeable with you?

Mr. Ross: Yes, your Honor, except that I would like for the sake of the record, and in view of my views of the various decisions under the McCarran Act and your Honor will see when I sum up my reasons for that, I would like to offer by reference this Immigration File, as it should properly be.

The Court: Any objection?

Mr. Simmons: There is no objection. We believe that the Court should review the proceedings.

Mr. Ross: That is offered by reference to Petitioner's Exhibit No. 1.

We now at this time offer into evidence by stipulation a report by Dr. Gerson Biskind, (spelling) B-i-s-k-i-n-d, M.D. of 2107 Van Ness Avenue, who conducted a paternity test and rendered a report

under date of March 30th, 1954, and it is stipulated that if the Doctor were here, he would testify in accordance with the written report.

Mr. Simmons: We so stipulate.

The Court: It may be marked.

Mr. Ross: May that be marked next?

The Clerk: Exhibits 1 and 2 in evidence.

(Thereupon the documents referred to and identified above were received in evidence and marked Petitioner's Exhibits Nos. 1 and 2.)

PETITIONER'S EXHIBIT No. 2

Gerson R. Biskind, M.D.
2107 Van Ness Avenue
San Francisco 9
GRaystone 4-8269

March 30, 1954.

Bertram H. Ross, Attorney,
1012 Citizens National Bank Bldg.,
453 South Spring Street,
Los Angeles 13, California.

Dear Mr. Ross:

We have performed the following blood typing studies on Jow Chu Yun, Jow Kwong Yeong, and Jow Mun Yow, and the results are listed below:

Jow Chu Yun

Blood Group.....IV-O
M-N Type.....M Positive
.....N Positive

Rh Type—

- C.....Positive
- c.....Negative
- D.....Positive
- E.....Negative
- e.....Positive

Probable Genotype.....CDe/C-e

Jow Kwong Yeong

Blood Group.....II-A

M-N Type.....M Positive
N Negative

Rh Type—

- C.....Positive
- c.....Positive
- D.....Positive
- E.....Positive
- e.....Negative

Probable Genotype.....CDE/c-E

Jow Mun Yow

Blood Group.....IV-O

M-N Type.....M Positive
N Positive

Rh Type—

- C.....Positive
- c.....Negative
- D.....Positive
- E.....Negative
- e.....Positive

Probable Genotype.....CDe/C-e

These findings indicate that Mr. Jow Chu Yun is homozygous for the small "e" factor, and does not have the large "E" factor. The absence of small "e" in Kwong Yeong and the presence of the big "E" indicates that he is homozygous for the big "E" factor. In order to be the son of Jow Chu Yun he should have inherited one small "e" factor. Since not even one small "e" factor could be demonstrated, it is evidence that he is not the son of Jow Chu Yun.

In the case of Jow Mun Yow it is not possible to exclude him as the son since he is exactly the same blood group and type as Mr. Jow Chu Yun.

Yours very truly,

/s/ GERSON R. BISKIND, M.D.

GRB:mb

Received April 1, 1954.

Admitted in evidence June 30, 1954.

Mr. Ross: Now, there are only two other things I would [3] like to do for the Court and to complete this record. I would like to ask the father and the Petitioners in this proceeding to step forward so that the Court can see what they look like; merely for purposes of identification, no testimony at all.

Will you step forward, Mr. Jow, please?

(Request complied with.)

Mr. Ross: Just stand up here so that the Court

can look at you and then you can take your seat. Will you turn around slowly?

(Request complied with.)

Mr. Ross: May he be seated now, your Honor?

The Court: Yes.

Mr. Ross: You, first. Which are you, Jow Mun Yow? You are Jow Mun Yow. Will you turn around slowly so that the Court can look at you?

(Request complied with.)

Mr. Ross: You may be seated.

Jow Kwong Yeong. Okay.

The Court: Who is that?

Mr. Ross: This is the younger boy, the one that the blood tests excluded under the blood test, your Honor.

The Court: What is the similarity of this last?

The Court: I don't see any physical similarity at all, your Honor, and the blood test indicates that the younger boy is excluded under that blood test from being the son of the [4] first gentleman you saw.

Under the blood test, the first young man could be, under the blood test, the son. And that is why I wanted your Honor to see both the alleged father and the alleged son that there is a remarkable physical similarity.

The Court: What is your thought on it?

Mr. Simmons: Well, if the Court please, as Counsel has indicated, the second boy, by the blood test, could not be the son of the alleged father. As to the other boy, the blood test is not conclusive. It

merely indicates that he is of the same group as the alleged father and could be the son; likewise, comparison of physical features, just in a general mass or group is nothing.

Of course, it is possible that they might be and it is possible that they might be two persons unrelated having identical features, so we have contended it proves nothing.

Mr. Ross: I just have a couple of moments of argument, that I would like to present to your Honor.

The Court: Proceed.

Mr. Ross: In this matter, if it please the Court, your Honor recalls that prior to the adoption and effective date of the McCarran Act in these Chinese cases, we were entitled to come in for declaratory relief under Section 703 of the Immigration Naturalization Act of 1940 and have a trial before the U. S. District Judge on the subject. [5]

The McCarran Act effective in December of 1952, I believe, rendered that impossible and now we are relegated to a hearing on habeas corpus. I am not going to ask your Honor to determine whether or not the habeas corpus takes the position in place of Section 703 because I don't think it's a matter that a U. S. District Judge can determine. I think ultimately that is a matter that is going to have to be determined by the Supreme Court of the United States, but I am going to reduce this case to some very, very simple terms, I think it's extremely simple.

We have a record here before your Honor, which

under the McCarran Act, your Honor is entitled to review on habeas corpus. If your Honor finds that the action based upon this record of the Immigration and Naturalization Service is arbitrary and capricious, your Honor has the right to turn the petitioners loose, and to determine that, they have established their paternity. The whole proceedings before the Immigration Naturalization Service was to determine whether or not these two young men were the sons of the petitioner.

Now, the record shows without contradiction that the petitioner is an American citizen, that is admitted, there is no question about it. There is no question that he went back to China and he got married in China. He claims to have had two children in China. The record fits together perfectly as to his sending money, to his sending money to his wife and [6] children in China, to his constantly making applications to get these two sons. The dates that he was in China fit with the ages of these two boys. The pictures, Exhibits A & B in the file, indicate that he did have a son when he was in China. His brother has testified as to his visits to his wife before she died and these two boys in China. The record is entirely clear from the testimony of these two boys, that they wrote to their mother—wrote their mother and grandmother. Everything fits into the record, but one little point, and we feel on that one little point the Immigration and Naturalization Service has been arbitrary and capricious.

If there is substantial evidence before your Honor,

your Honor cannot disregard that because of some hunch your Honor has. Sure, if it's an inference versus evidence, it's different.

Now, the one little thing upon which this record resulted in an exclusion order is the fact that these boys testified that they didn't remember making a certain trip to Hong Kong from Macao in 1946, at the time when they were ten or eleven years of age. The uncles having testified that they met them in China and one of them took them on a trip into Hong Kong. The boys did know that they had seen the uncle and visited—money was brought from the father—but they said they didn't remember the trip.

Now, it is entirely possible that both the uncle and the boys could have been telling the truth. They went through some [7] rather rugged things prior to 1946 in China, and it's possible that ten year old boys, who were subjected to this China-Japanese War and other things might not remember something. But, if your Honor reads this record over, your Honor will come to the conclusion and the opinion, which is inescapable, that there has been an identification.

Now, as to the blood tests. Your Honor knows, I know, that the law gives no more credence to this testimony than to anything else. In my forthrightness with this Court when I found the result of the blood tests as to both boys, I brought it in before your Honor for whatever it is worth. I didn't control it, I didn't try to hold one test out and bring the other in; they are both here before your Honor.

I submit that in line with decisions that your

Honor has reached, which are now on appeal in the Circuit Court of Appeals, that this is a perfect case, at least as to the one boy and possibly to the two of them. I think that your Honor is obliged to read this record and if your Honor comes to the conclusion that I have come to, that the Immigration Service was arbitrary and capricious in denying the rights of American citizenship and the rights to stay in this country to these boys, that your Honor should order the discharge of these two boys and permit them to remain in the United States.

Mr. Simmons: If the Court please, I agree with Counsel in this respect, that the main problem before the Court will be [8] a review of the proceedings before this Service.

However, I believe that you will find on a review of the record, that there was more than one point of discrepancy and that the Board of—I mean the Board of Immigration Appeals in deciding the matter on appeal, pointed out that the members of the Board of Special Inquiry were in a position to observe the conduct and demeanor of all of these witnesses at the time that they gave testimony. They found discrepancies and conflicts in the testimony of the witnesses and the lack of acceptable evidence.

Now, it's important to remember that in these cases of this nature, we have a difficult problem of identification. And the Board of Special Inquiry and the Board of Immigration feels, when confronted with, a problem of determining whether or not the claimed relationship exists. We have, of course, as your Honor is familiar, the usual testi-

mony, and they go into what may appear to be collateral matters in an effort to determine whether there is in fact credence to be placed on the testimony of the witnesses. It's the only way in which they can attempt to do justice to the matter. And, therefore, they have a double consideration: Was there any evidence, was there sufficient evidence given, and was the testimony reliable on the basis of discrepancies or lack of discrepancies, and as one Court has pointed out, sometimes a perfect story means that it was prearranged, if there are no discrepancies. [9]

Now, in this case, they have indicated in the decision that there was both a lack of evidence and discrepancies and, I believe, that your Honor will find on a review that the Board's statements in that regard were correct.

The Court: Is there any other information you can give, Counsel?

Mr. Ross: All I can say to your Honor is that the Special Board of Inquiry, which is held at a point of embarkation, such as San Francisco, is made up of Immigration Inspectors who are employees of the Government and employees of the Immigration Service, and at that hearing, which was a very lengthy one, these petitioners were represented by one Jack Chow, who is a local attorney here. And then when the announcement was made, there was an appeal with a brief filed by the Board of Immigration Appeals, which likewise is composed of members of the Department of Justice, employees

of the Immigration Service, who constituted the particular board doing that type of work,—I mean—

Mr. Simmons: May I make one correction, Counsel? They are not employees of the Immigration Service, they are directly under the Attorney General and not connected in any way with our service here.

Mr. Ross: That is true, but your Service is a part of the Department of Justice. The Board is a part of the Department of Justice. To me, it is like a situation of having a [10] Police Board of Rights determining appeals which is made up of policemen. I mean that is the thought that I have, that judicial review is an independent—which you don't have—administrative tribunal reviewing a work of a department within a department.

The Court: Now, in the record where is the transcript of the hearings?

Mr. Simmons: A full transcript of the testimony is there, your Honor.

The Court: All right. Let the matter stand submitted.

Mr. Ross: May I say this to your Honor? Counsel advises me that in view of the length of time that this matter has taken, I can make an application to the Director of Immigration for bail, pending your Honor's decision, and if we are unhappy with the determination there, we can come to your Honor and ask your Honor to fix bail?

The Court: Pursue your remedy of law, whatever it may be.

Mr. Ross: Thank you, your Honor.

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 11 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ JOAN Y. VAN ZANTE.

[Endorsed]: Filed September 2, 1954. [11]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Petition for writ of habeas corpus.

Order to show cause.

Return to order to show cause.

Order granting habeas corpus.

Order.

Notice of appeal.

Designation of record on appeal.

Stipulation re record on appeal.

Petitioner's exhibits 1 and 2.

Reporter's transcript of proceedings on trial,
June 30, 1954.

In Witness Whereof, I have hereunto set my hand
and affixed the seal of said District Court, this 3rd
day of September, 1954.

[Seal] C. W. CALBREATH,
 Clerk.

By /s/ WM. C. ROBB,
 Deputy Clerk.

[Endorsed]: No. 14,503. United States Court of
Appeals for the Ninth Circuit. Jow Chu Yun, on
behalf of Jow Mun Yow, Appellant, vs. Bruce G.
Barber, District Director, Immigration and Natu-
ralization Service, Appellee. Transcript of Record.
Appeal from the United States District Court for
the Northern District of California, Southern Divi-
sion.

Filed September 3, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Endorsed]: No. 14,504. United States Court of Appeals for the Ninth Circuit. Jow Chu Yun, on behalf of Jow Kwong Yeong, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed September 3, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

Case No. 14,503

JOW CHU YUN, on Behalf of JOW MUN YOW,

Appellant,

vs.

BRUCE G. BARBER, as District Director of Im-
migration and Naturalization Service,

Appellee.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD PUR-
SUANT TO RULE 17(6)

Appellant in the above-entitled cause will rely upon the following points:

(a) That the Immigration Service determined that Jow Mun Yow was not a citizen of the United States contrary to the evidence;

(b) That the United States District Court erred in determining that Jow Mun Yow was not a citizen of the United States;

(c) That the action of the Immigration and Naturalization Service in determining that Jow Mun Yow was not a citizen of the United States was arbitrary and capricious;

(d) That the McCarran Act merely substituted habeas corpus in place of Section 703 of the previous

Immigration and Nationality Act, which entitled American citizens of Chinese origin to determine their citizenship by declaratory relief.

Appellant designates the following portions of the record as being necessary to deal with the foregoing problems:

- (a) Petition for writ of habeas corpus;
- (b) Return to order to show cause by Bruce G. Barber;
- (c) Order granting writ of habeas corpus entered June 8, 1954;
- (d) Order vacating writ of habeas corpus and dismissing petition;
- (e) Transcript of oral proceedings before the United States District Court on June 30, 1954;
- (f) Notice of appeal filed herein;
- (g) Stipulation re record on appeal;
- (h) File of Immigration Service, including transcript of testimony before Board of Special Inquiry, which was introduced in evidence by reference.

Dated this 9th day of September, 1954.

/s/ BERTRAM H. ROSS,

As Attorney for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 10, 1954.